

REMARKS

Claims 1, 4, 5, 6, 7 and 9 remain in the case, claims 2, 3 and 8 being canceled as a part of the instant response. Claims 10 and 11 have been earlier withdrawn by the Applicant, without traverse, as drawn to the unelected species in response to the Examiner's restriction requirement. Claim 3 has been currently also withdrawn by the Examiner as reciting the unelected species and is therefore currently canceled from the case by the Applicant.

The specification has been objected to for several oversights and imprecise expressions kindly noted by the Examiner. We regret the oversights and imprecisions.

Fully observing the comments kindly indicated by the Examiner the Applicant has either corrected each error as suggested by the Examiner, and/or has modified the expressions to present a coherent geometric nomenclature for the structure described. To obviate all possible future disputes articulating arguments of new matter the foregoing corrections and amendments all retain the substance and the detail of the specification text as originally filed.

Claims 1, 2 and 4-10 were rejected under 35 USC 112, second paragraph, as failing to particularly point out and distinctly claim the invention. This rejection is respectfully traversed, particularly in light of the foregoing amendments and cancellations of the claims.

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Observing in detail the claim defects kindly noted by the Examiner and their suggested corrections, each of the imprecise and confusing portions of the claims have now been carefully amended, or canceled. The claims now remaining both conform with the requirements of Section 112 and also positively recite the invention over the art cited.

Claims 1, 8, 9 and 10 were rejected under 35 USC 102(b) as fully anticipated by the teachings of the Fernandez. This rejection is respectfully traversed, particularly in light of the foregoing claim cancellations and amendments.

Claim 1, and therefore all the remaining claims depending therefrom, has been carefully amended and now recites a straight line intersection between the lower planar portion and the upper portion of the front side, thus forming a straight fulcrum line onto which the type of one edged blades that include a reinforcing spine can be manually dragged and thereafter pivoted to separate them from the embedded magnet to effect their release. While perhaps the intersection of the flat front side 7 with the curved opening 8 of Fernandez can function, after a fashion, as a fulcrum for the thin, double-edged blades that flex about a line of perforations down their middle, clearly the Fernandez curved intersection line cannot serve as a fulcrum for a stiff, reinforced one-edged blade.

Since this straight line fulcrum recitation is now included in the only independent claim remaining, i.e., claim 1, all the remaining claims are distinguishable on the same bases. Reconsideration of the instant rejection is therefore respectfully urged.

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Claim 2 was rejected under 35 USC 103(a) as obvious from the teachings of Fernandez in view of the Examiner's Official Notice of well known facts in the packaging art. This rejection is respectfully traversed, particularly in light of the foregoing cancellations and amendments.

Applicant is mindful that the instant Office Action straddles the deliberation period in the long-anticipated, and now just announced, ruling on the standard of obviousness by the unanimous Supreme Court in *KSR International Co. v. Teleflex, Inc.*, 550 U.S. ____ (April 30, 2007). While it has been widely touted that the Honorable Justice Kennedy now articulates in this ruling substantial further guidance on the subject, the ruling nonetheless affirms, directly in its text, the law earlier articulated by the Federal Circuit in *In re Kahn*, 441 F.3d 977 (Fed. Cir., 2006) which, in turn, rests on *In Re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614 (Fed.Cir., 1999). We quote verbatim Justice Kennedy on this point:

"To facilitate review, this analysis should be made explicit. See *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006)("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.") As our precedents make clear, however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." [550 U.S. at app. pp 6-8, emphasis added]

Thus while generally hailed as a milestone ruling the guidance just issued by the Supreme Court only mildly corrects the current interpretation by the Federal Circuit of its earlier decisions. Stated simply, some rationale for a ruling must be included in the record in

order to avail to the applicant the right to due process, i.e., there must be an articulated reason in the record of the Office Action to avail to the Applicant a right to a review on appeal.

Exactly these same due process concerns were addressed seven plus years ago by our Supreme Court in its earlier precedent *Dickinson v. Zurko*, 527 U.S. 150, 119 S.Ct. 1816, 50 USPQ2d 1930 (1999), holding that the standard of review of these proceedings should approximate a standard like that in the Administrative Procedure Act [APA] which mandates a reversal if the ruling is not supported by substantial evidence.

Resting on the pillars in *Zurko* the Federal Circuit in *In Re Gartside*, 203 F.3d 1305, 53 USPQ2d 1769 (Fed.Cir., 2000) imposed the substantial evidence test to findings of obviousness, reiterating its earlier reasoning in *In Re Dembiczak, supra*. Accordingly by citing *In re Kahn, supra*, the *Dembiczak* rule is now imprinted with what the Federal Circuit then, and now the Supreme Court, mandate and an express factual reference must exist in the record pointing to a suggestion, and now also an inference, for the combination of references in the prior art that, like here, is cited for the conclusion of obviousness.

Quoting the Federal Circuit directly from *Dembiczak*.

“Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references. [Citations] ... Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor’s disclosure as a blueprint for piecing together the prior art to defeat patentability—the essence of hindsight. [Citations] ...”

and

“In addition to demonstrating the propriety of an obviousness analysis, particular factual findings regarding the suggestion, teaching, or motivation to combine serve a number of important purposes, including: (1) clear exposition of the position taken by the Examiner ... “

175 F.3d at 998, 50 USPQ2d at 1616-1617, emphasis added

Thus by referring generally to its precedent and also to the Federal Circuit’s reasoning in *In re Kahn* Justice Kennedy, not just once, but twice, demands a reasoned basis in the record of the rejection in order to allow a meaningful review on appeal. Per force, the current state of the law requires a clear factual record that needs to be specified in support of any rejection.

Against this backdrop, while the Applicant does not oppose the reference by Official Notice of well known facts in the packaging industry, we respectfully submit that the combination of a straight line fulcrum, as now recited in claim 1, is neither taught nor suggested in any of the references cited.

Claims 4-7 were rejected under 35 USC 103(a) as obvious from the teachings of Fernandez, in view of Mutai et al., Kershner, or Potter, and in further view of the Examiner’s Official Notice. This rejection is respectfully traversed, particularly in light of the foregoing amendments and cancellations of the claims.

In response to this rejection we respectfully adopt and refer to the arguments set out above, and particularly to the limitations that have now been inserted into Claim 1 from which the remaining claims depend.

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Clearly, against this prior art record and the distinctions now positively recited in the claims all bases for rejection and objection have now been removed and reconsideration followed by an early notice of allowance is are respectfully urged.

Respectfully submitted,



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